

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, May 10, 2006, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Walter Schmidt

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Sheri Mount

OTHERS PRESENT: Town of Merton Board of Adjustment
Dave Kirk, BA06:032, petitioner
Kevin Dittmar, BA06:033, petitioner
Linda Lorier, BA06:033, neighbor
Ray A. Warrell, BA06:031, property owner
Barry & Phyllis Stone, BA06:016, property owners
Kent Johnson, BA06:031, petitioner
Chris Dix, BA06:016, neighbor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of April 26, 2006.*

The motion was seconded by Mr. Schmidt. Mr. Tarmann abstained as he was not present at the April 26, 2006 hearing and the motion carried 4-1.

NEW BUSINESS:

BA06:018 SHELTON KNOLL LLC
Bauer Sign Co. – Petitioner

Mr. Schmidt *I move to adopt the recommendation of the staff to deny the request, for the reasons set forth in the Staff Report. I would also move that the record show that neither the owner nor the petitioner is present.*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for denial.

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

The petitioner has not been in contact with the County and has not submitted any information regarding the proposal. This hearing has been held open for two months in order to accommodate the petitioners. It is not appropriate to hold the hearing open any longer.

BA06:032 ST. PAUL'S CATHOLIC CHURCH
Eppstein Uhen Architects – Petitioner

Mr. Schmidt *I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval of the request for a variance from the remodeling a nonconforming structure in excess of 50% of its value requirements and denial of the request for a variance from the parking offset requirements of the Ordinance to allow construction of a basement and first story addition to the existing church/school building, with the following conditions:

1. All parking must conform to the Ordinance requirements.
2. Prior to issuance of a Zoning Permit for the addition, the Conditional Use and Plan of Operation Permits must be issued.
3. Prior to issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has been demonstrated, as is required for a variance that denial of the requested variance from the 50% provision of the Ordinance would result in an unnecessary hardship. The existing structure is substantially conforming, as it is located only slightly over a half foot closer to the north property line than required. Denial of the parking offset variance, however, would not result in an unnecessary hardship. The church has planned for well over the required amount of parking and therefore, there is no hardship in losing or moving the parking spaces that don't conform to the parking offset requirements. Further, approval of the parking spaces closer to C.T.H. D than the Ordinance requires would be a safety hazard. Therefore the approval of this request, with the recommended conditions, provides a reasonable use of the property, is not unnecessarily burdensome, and will permit the construction of the requested two-story addition that is not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA06:033 KEVIN DITTMAR
Curtis Rehm – Owner

Mr. Schmidt *I make a motion to adopt the staff's recommendation, as stated in the Staff Report for the reasons stated in the Staff Report, with the following changes to the conditions:*

Condition No. 6 shall be changed to read: "The residence and attached garage must be constructed within the existing footprint. No expansion of the existing footprint is permitted."

Condition No. 7 shall be changed to read: "No decks are permitted on the first or second floor on the lakeside of the residence, which protrude beyond the footprint of the structure."

Condition #10 shall be changed to read: "The areas between the residence and the lot lines may not be composed of entirely impervious surfaces. Any sidewalks, stairs, or walkways along the sides of the residence must be 3 ft.

wide or less. A parking space is permitted, but must be composed of pervious materials."

The motion was seconded by Mr. Tarmann. Mr. Ward abstained and the motion carried 4-1.

The staff's recommendation was for approval of variances from the shore setback, floodplain setback, road setback, floor area ratio and open space requirements, approval of a special exception from the minimum first floor area, and denial of the variance from the offset requirements, with the following conditions:

1. The existing patio and boardwalk along the shore must be removed.
2. A new patio may be constructed on the lakeside of the residence but shall be no wider than 8 ft.
3. A 30% (16 ft. width) "view corridor" is permitted for access to the lake, which may consist of a 3 ft. wide walkway and/or mowed grass. The remaining area between the new patio and the shore shall be planted with a buffer of native vegetation. A plan for the shoreline restoration and revegetation shall be submitted to Planning & Zoning Division staff for review and approval prior to issuance of the Zoning Permit for the new residence.
4. The proposed residence, including the first and second floors (not including the basement level), attached garage, any covered decks, covered patios, and/or covered porches, and the attached garage do not exceed 1,500 sq. ft.
5. The footprint shall consist of the 200 sq. ft. garage and 650 sq. ft. on the first floor.
6. The residence and attached garage must be constructed on the existing foundation. No expansion of the existing footprint is permitted.
7. No decks are permitted on the first or second floor on the lakeside of the residence.
8. The proposed residence must not exceed three stories (including the exposed basement level), as viewed from the lake. The proposed residence and attached garage must conform to the height requirements of the Ordinance.
9. The residence and attached garage and all other appurtenances must be at least 7 ft. from the east and west lot lines, as measured to the outer edges of the walls and any windows/bump outs, fireplaces, etc that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width. Any sidewalks, stairs, or walkways along the sides of the residence must be located at least three (3) ft. from the side lot lines.
10. The areas between the residence and the lot lines may not be composed of entirely impervious surfaces. Any sidewalks, stairs, or walkways along the sides of the residence must be 3 ft. wide or less.
11. Any proposed deck(s) must be located a minimum of 5 ft. from the side lot lines and 30 ft. from the shore and floodplain.
12. Prior to the issuance of a Zoning Permit, the Oconomowoc Town Board must approve the location of the proposed garage partially within the established road right-of-way, and evidence of that approval must be submitted to the Planning and Zoning Division Staff
13. A Declaration of Restrictions shall be prepared by the Planning and Zoning Division Staff, stating the residence is located partially within the established road right-of-way and if, in the future, any portion of the garage should interfere with necessary road improvements, that portion of the garage must be

removed at the owner's expense. Prior to the issuance of a Zoning Permit, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's Office, and a copy furnished to the Planning and Zoning Division Staff.

14. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
15. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached garage, decks and patios, as well as any proposed sidewalks, stairs, walkways, and/or retaining walls, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the location of the 100-year floodplain elevation on the property, if applicable.
16. All existing retaining walls must be removed. Any newly proposed retaining walls must be incorporated into the Grading Plan required in Condition No. 14. The use of retaining walls shall be minimized to the maximum extent possible. In addition, all retaining walls must be "screened" from the lake with vegetation. All newly proposed retaining walls shall be 4 ft. in height or less as measured from final grade at the bottom of the wall to the top of the highest point of the wall. Any retaining walls proposed within 5 ft. of the side lot lines require approval from the Town of Oconomowoc Plan Commission and the Waukesha County Park and Planning Commission.
17. In order to ensure the construction of a new residence and attached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and any newly proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 15.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. It has not been demonstrated, as required for a variance, that denial of the requested variance from the offset requirements for the proposed deck would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It is possible to construct either a smaller deck or a walkway that would conform to the Ordinance requirements. Granting of the shore, floodplain and road setback variances allows the petitioner to utilize the existing foundation and minimize total disturbance required for construction of a new residence. Granting the shore and floodplain setback variance for the retaining walls is also necessary in order to allow use of the existing foundation. However, planning staff feels that the number of retaining walls could potentially be reduced; therefore it is not necessary to allow all existing retaining walls to be rebuilt. Denial of the petitioner's request to retain the existing patio and boardwalk also does not result in an unnecessary hardship. The existing patio is in need of repair. In addition, the patio and boardwalk will likely be completely destroyed during the course of construction on the residence anyway. The recommended location of the new patio is further back from the shore and floodplain than the existing patio and also reduces the amount of impervious surfaces on the property.

With the basement level, the residence will be 1,900 sq. ft. of living and storage space, which provides a reasonable use of this very small property. Therefore the approval of this request, with the

recommended conditions, provides a reasonable use of the property, is not unnecessarily burdensome, and will permit the construction of a residence and attached garage that will be appropriately sized for the lot, and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA06:021 JDJ BUILDERS, INC.
KERIC DECHANT - Owner

Mr. Schmidt

I make a motion to adopt the staff's recommendation, as stated in the Staff Report dated April 26, 2006 and the Staff Memorandum dated May 10, 2006 for the reasons stated in the April 26, 2006 Staff Report, with the following change:

Condition #2 shall be changed to read: "The floor of the detached garage shall be not more than 1.57 ft. below the Regional Flood Elevation and must comply with NR 116 in all other respects."

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. No changes to the existing footprint of the garage are permitted.
2. The floor of the detached garage shall be at least one (1) foot above the floodplain elevation of North Lake.
3. There shall be dry land access to the detached garage per Section 8(2)(A)(iii) of the Waukesha County Shoreland and Floodland Ordinance, if applicable, or a waiver must be obtained from the Town of Merton.
4. A detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the remodeling of the garage and associated fill does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. The northeast, southeast, and northwest sides of the garage shall remain exposed and no fill shall be added to those sides of the garage to minimize the impact on the adjacent property. The exposed portion of the garage walls should be covered with decorative block, stone or siding. It should be noted that retaining walls, if necessary, may be permitted to minimize the displacement of floodwater by fill.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request will allow the petitioner to repair and remodel the existing detached garage on the property. The residence does not contain a basement and some storage area is needed. Due to the configuration of the lot, the owner would not be able to construct a new detached garage in a more conforming location without the need for variances. There is an existing tree line between the detached garage and the neighboring property to the northeast, screening it from view from the neighboring property. The approval of this request would not be contrary to the public interest and therefore would be in conformance with the purpose and intent of the Ordinance.

BA06:016 BARRY & PHYLLIS STONE REV TRUST
Joe Terlizzi - Petitioner

Mr. Ward

I move to adopt the recommendation of the staff to deny the request for the after-the-fact variance from the offset requirements for the addition. However, I move to approve the request for an after-the-fact variance from the 50% provisions with the following conditions:

Condition #1: The porch/addition must be restored to its original size and footprint. The roofline may be modified accordingly.

Condition #2: The County must issue a Zoning Permit and a building permit must be obtained from the Town prior to the commencement of the work.

Condition #3: The matter shall be forwarded to the Waukesha County Corporation Counsel so that appropriate legal action can be taken for the construction that took place without the required permits.

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for denial of the after-the-fact request for variances from the offset and remodeling a nonconforming structure in excess of 50% of its fair market value requirements.

The reasons for the Board's decision are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance for offset would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested offset variance will not prevent the property from being used for the permitted purpose of single-family residential use and would not be unnecessarily burdensome. First, this owner has already been granted two variances to remodel and add additions to this extremely non-conforming structure, one of them an after-the-fact approval for a two-story addition and interior remodeling. Those previous variances granted minimum relief from the Ordinance requirements and provided for reasonable use of this property. Further, this is a very large property and there is ample room to build a large and completely conforming structure. In addition, this property owner has been through this process twice before and knew that permits and variances are required for work on this structure. This contractor is also aware of the County's Ordinance requirements and the need for building permits from the Town. Property owners and contractors should not be rewarded for undertaking work without the necessary permits. The fact that the work is already done is not a valid reason to grant the variance. This structure is situated 3.4 ft. on the adjacent property to the south and will not be allowed to continue being expanded. The variance from the 50% provisions of the Ordinance is justified because the Board already approved the original footprint under the previous variances requests. Allowing the owners to restore the structure to its previous footprint (and changing the roofline accordingly) is within the purpose and intent of the original 1991 variance approval. The structure is substantial already and allowing it to remain as it was before the recent illegal work was undertaken is reasonable. Further, the Board feels that had the owner come in before undertaking the work and ask for a variance to alter the roofline to correct a drainage problem, the Board likely would have approved it as it does not result in a larger or more expanded structure than what was already previously approved. Finally, the violation has been addressed by forwarding the matter on to the County Corporation Counsel. Therefore, the approval of the request for a 50% provision variance and denial of the offset variance, with the recommended

conditions, is in conformance with the purpose and intent of the Ordinance.

BA06:031 RAYMOND & SUZANNE WARELL
Johnson Design – Petitioner

Mr. Schmidt *I move to adopt the recommendation of the staff to deny the request for the reasons set forth in the Staff Report.*

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for denial.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested variances will not prevent the property from being used for the permitted purpose of single-family residential use and would not be unnecessarily burdensome. The district allows for a 2,545 sq. ft. of living and storage space (not including the 1,254 sq. ft. exposed basement level), which provides a reasonable use of this property. Furthermore, although the petitioner states that topography is a limiting factor in being able to conform to the Ordinance requirements, in fact, the topography of the lot is conducive to full exposures on both sides, which the owners are taking advantage of; therefore, a garage could be built into the basement level (as it currently is on the existing residence) and not count at all towards the total floor area on the property. If the owners need a larger home, they have the option of tearing down the existing detached garage, constructing a new attached garage on the basement level, and making the residence larger. A height variance is not justified, as it is not necessary to have a four-story home or a home that exceeds the other height requirements in order to gain reasonable use of a residential property. Further, granting of the height variance would be detrimental to the public interest as it would be an overpowering structure on this property, look much larger than surrounding structures from the Lake, and would also have a negative impact on the neighboring properties. Further, a new single-family residence with attached garage could be constructed on this property and be completely conforming to all Ordinance requirements. Therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 9:25 p.m.*

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Sheri Mount
Secretary, Board of Adjustment